

**Entered on Docket
September 26, 2016**
EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re	DENNIS MICHAEL ESCARCEGA, Debtor) CASES CONSOLIDATED FOR DECISION Case No.: 16-50368 SLJ Chapter 13
In re	EUGENE EDWARD VICK, Debtor) Case No.: 16-50401 MEH) Chapter 13))
In re	NANETTE MARIE SISK, Debtor) Case No.: 16-50548 SLJ) Chapter 13))
In re	JERI LYLE SALDUA MERCADO, Debtor) Case No.: 16-50651 SLJ) Chapter 13))
In re	MARK IRVIN CANDALLA, Debtor) Case No.: 16-50659 SLJ) Chapter 13))

MEMORANDUM DECISION

1 **MEMORANDUM DECISION REGARDING CONFIRMATION OF CHAPTER 13**
2 **PLANS USING ADDITIONAL PROVISIONS VIOLATING BANKRUPTCY CODE**
3

4 In February 2016, the judges of the San Jose Division required chapter 13 debtors to
5 adopt the Chapter 13 Model Plan (“Model Plan”), which had been adopted by the remainder
6 of the district in August 2013. In certain cases filed in the San Jose Division, counsel have
7 modified the terms of the newly implemented Model Plan. The cases covered by this order
8 include modified Model Plans.

9 The unvarnished purpose behind the proposed modifications is to perpetuate the
10 apparently long-standing practice in the San Jose Division that permits confirmation of
11 chapter 13 plans without a defined term,¹ that allows no possibility of distribution on allowed
12 claims of general unsecured creditors,² and that permits Debtors to obtain a discharge prior to
13 the end of the estimated term without further court order.³ All in all, these provisions are
14 intended to authorize debtors to pay off their plans and obtain a discharge at any time after
15 confirmation without having to go through the plan modification process and without having
16 to pay allowed unsecured claims in full.

17 Because the additional provisions are inconsistent with the plan in use in the
18 remainder of the district and are contrary to the Bankruptcy Code⁴ in application, they cannot
19 be approved. This decision explains why.

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¹ *Escarcega*, 16-50368, Docket # 4, Sec. 5.02. This citation, and similar citations to the
22 docket of the cases being decided, are for reference to the applicable provision or arguments
23 raised in the court’s record. Our analysis of such provisions or arguments is discussed
24 throughout this Memorandum Decision.

² *Vick*, 16-50401, Docket # 26, Sec. 5.02.

³ *Escarcega*, 16-50368, Docket # 4, Sec. 5.03; *Vick*, 16-50401, Docket # 26, Sec. 5.03.

⁴ All statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*
25 (the “Bankruptcy Code”) unless noted.

1 **I. THE BANKRUPTCY COURT DECIDES THESE CASES INVOLVING
2 MODIFICATIONS TO A FORM PLAN EN BANC**

3

4 The cases covered by this decision involve issues that commonly arise in chapter 13
5 cases filed in the court's San Jose Division. Because of the wide application of this decision,
6 the judges who preside over chapter 13 cases in San Jose have determined to act jointly in
7 deciding these matters. The judges have either heard testimony in the submitted cases or have
8 reviewed transcripts of trial proceedings and are familiar with the facts and arguments
9 presented therein.

10 The court's authority to decide these cases jointly is found in Federal Rule of Civil
11 Procedure 42, which permits the trial court to consolidate for hearing or trial matters that
12 involve a common question of fact or law. Fed. R. Civ. P. 42, made applicable by Fed. R.
13 Bankr. P. 7042. *See In re Iron-Oak Supply Corp.*, 162 B.R. 301, 304 (Bankr. E.D. Cal. 1993);
14 *In re Postconfirmation Fees*, 224 B.R. 793, 794 (E.D. Wash. 1998); 9A FED. PRAC. & PROC.
15 Civ. § 2381 (A. Wright, A. Miller et al. 3d ed.) ("[the] objective [of Rule 42] is to give the
16 district court broad discretion to decide how cases on its docket are to be tried so that the
17 business of the court may be dispatched with expedition and economy while providing justice
18 to the parties").

19

20 **II. BACKGROUND**

21 A. Chapter 13 Cases and Plans

22

23 Chapter 13 of Title 11 of the United States Code spells out the requirements, process,
24 and rewards of a chapter 13 case. A debtor achieves the most significant benefits of chapter
25 13—such as, obtaining a discharge of most unsecured debt and elimination of underwater
26 liens on a residence and other property—by filing, confirming, and completing a chapter 13
27 plan. *See* 11 U.S.C. §§ 1321, 1322, and 1325.

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1 In the chapter 13 plan, a debtor agrees to submit some or all of his or her future
2 earnings or other future income to a standing chapter 13 Trustee (“Trustee”). The Trustee
3 accumulates this money and uses it to pay creditors’ claims. §1321(a)(1). The plan serves as
4 the mechanism by which the debtor can alter certain contractual obligations such as, for
5 example, modifying the rights of a secured creditor, curing a default on a home loan, or
6 assuming an unexpired lease. § 1322(b). A chapter 13 debtor must begin making the
7 payments called for in his or her plan to the Trustee within 30 days. § 1321.

8 A plan can be confirmed or approved by the court only if it meets stringent
9 requirements. A chapter 13 plan must be proposed in good faith and must comply with
10 applicable provisions of chapter 13 and the Bankruptcy Code. In addition, the plan must
11 provide for full payment of all claims entitled to priority under § 507 (unless the claim holder
12 otherwise agrees).⁵ The plan also must provide for equal treatment of claims by class (i.e., a
13 debtor must treat all unsecured claims equally whether the holder of the claim is a credit card
14 company or a relative). § 1322(a)(2) and (3). Importantly, the debtor must demonstrate that
15 the plan meets the “liquidation test,” in that unsecured creditors will receive no less through
16 the chapter 13 plan than they would receive in a chapter 7 liquidation. Finally, the debtor
17 must prove “feasibility” by showing that he or she can make all the payments called for under
18 the plan. § 1325(a).

19 The length of a chapter 13 plan varies. *See* § 1325(b)(1)(B) and (b)(4). When the
20 Trustee or a creditor objects to confirmation, the plan length depends on debtor’s income level
21 after payment of certain expenses. *Id.* A “below median” debtor cannot be compelled to have
22 a plan that extends past 36 months; while a plan proposed by an “above median” debtor must
23 be no longer than 60 months.⁶ A below median debtor may propose a plan that lasts longer

24 ⁵ A limited exception is provided for priority claims for domestic support obligations assigned
25 to or owed directly to a governmental unit when all of the debtor’s projected disposable
income for a 5-year period will be paid under the plan. § 1322(a)(4).

26 ⁶ “Below median” and “above median” are statutory terms which refer to the debtor’s income
27 level as compared to the median state income for a similar household size. *See* § 1325(d)(1)
28 and § 707(b)(2).

1 than 36 months if desired. *See* § 1322(c). The Debtors in the cases at bar argue that because
2 there was no objection by the Trustee or creditors in these cases, that no minimum plan length
3 is required. We address—and reject—that point later in this opinion.

4 After a plan has been served on all creditors, it is set for a confirmation hearing.

5 § 1324. If the plan satisfies all applicable requirements, then the court will confirm it.

6 Most plans last three to five years. It is commonly the case that circumstances arise
7 which affect a debtor’s ability to perform under his or her confirmed plan. For that reason the
8 Bankruptcy Code provides a means to modify a plan after confirmation. § 1329. Plans may
9 be modified to change the amount of a payment, the time for making payments, or to alter the
10 amount of the distribution to a creditor whose claim is provided for in the plan. § 1329(a). A
11 debtor is not the only party who is authorized by the Bankruptcy Code to seek modification of
12 the plan. Both the Trustee and unsecured creditors also can request modification if
13 circumstances warrant. *Id.* Alternatively, a debtor may receive a hardship discharge without
14 completion of a plan if the debtor’s “failure to complete payments is due to circumstances for
15 which the debtor should not justly be held accountable.” § 1328(b).

16 Once a debtor completes the required payments under the confirmed plan, the debtor
17 is entitled to a discharge. The chapter 13 discharge provides greater protection against
18 creditors than is obtained in a chapter 7 liquidation. *Compare* § 1328(a) with § 727; *United*
19 *Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 268, 130 S. Ct. 1367, 1376 (2010) (“A
20 discharge under Chapter 13 ‘is broader than the discharge received in any other chapter.’”). It
21 is against this statutory background that we review the additional provisions proposed by
22 Debtors.

23

24 B. History of the Northern District of California’s Model Plan

25 Pursuant to Bankruptcy Local Rule 1007-1, the court may approve and require the use
26 of practice forms. Practice forms may be adopted on a district-wide or division-wide basis.
27 As the name suggests, practice forms are used to regularize practice and foster consistency
28

MEMORANDUM DECISION

1 throughout the district or division. Predictability as to where and how information is
2 presented assists the court and the parties. Debtors do not challenge the court's ability to
3 adopt a practice form or the process by which the Model Plan was created or adopted. But
4 they argue that the Model Plan is a de facto local rule that abridges a debtor's rights and
5 enlarge a creditor's rights.⁷

6 In order to provide context to our discussion of the Model Plan we now address the
7 history and adoption of the Model Plan. This discussion is not relevant to the holding and
8 references information that is not part of the record.

9 The judges of this court determined to draft a model chapter 13 plan for the entire
10 district in 2012. They sought to move away from the three forms and assorted individual
11 plans then in use. During 2012 and 2013, three judges drafted the Model Plan for the
12 Northern District. In the process, they solicited and received written comments on the draft
13 Model Plan from the three chapter 13 trustees in the district, as well as from members of the
14 debtor and creditor bar. The judges then met with members of the bar and interested trustees
15 and received additional comments. A number of the recommendations received were
16 incorporated into the Model Plan. The court designed the Model Plan with the goal of
17 creating a practical, efficient, and effective plan.

18 In August 2013, the Oakland and San Francisco Divisions implemented the Model
19 Plan. At the same time, the Santa Rosa Division allowed, but did not require, its use. The
20 San Jose Division did not adopt the plan at that time.

21 In late 2015, the judges in the San Jose Division announced that they would adopt the
22 Model Plan. Doing so was important for two reasons. First, one of the bankruptcy judges
23 assigned to the San Jose Division has retired and is not going to be replaced immediately. By
24 regularizing the chapter 13 practice throughout the district, along with altering judicial
25 assignments, the court is better able to provide parties with equal access to courts and judges'

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⁷ *Escarcega*, 16-50368, Docket # 46, page 22, lines 13-18, and page 23, lines 6-16.

1 calendars. This need will only increase in the foreseeable future, as a second judge will retire
2 in 2017, and he, too, will not be replaced immediately.

3 Second, the United States Judicial Conference’s Advisory Committee on Bankruptcy
4 Rules has proposed the creation of a National Chapter 13 Form Plan (“National Plan”). It is
5 projected that as of December 1, 2017 every bankruptcy court will be required to use the
6 National Plan, unless the district adopts a form plan consistent with certain parameters.
7 Districts may adopt a form plan prior to adoption of the related rule. Use of the Model Plan
8 anticipates this important change in district procedures.

9 Though Debtors do not challenge the court’s formulation of the Model Plan, they
10 contend that requiring its use is a de facto local rule that is inconsistent with acts of Congress
11 and, therefore, must be invalidated. This argument is misplaced as the Model Plan is a form
12 not a rule. Bankruptcy Local Rule 1007-1 approves the use of required practice forms. The
13 Model Plan is neither unlawful nor a violation of any party’s rights because it faithfully
14 follows applicable law—unlike the proposed additional provisions. The analysis supporting
15 this conclusion is set forth in Sections III, F and G, below.

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17 C. The Confirmation Process in the San Jose Division

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19 Confirmation of the plans covered by this opinion was consistent with longstanding
20 procedures in the San Jose Division.⁸ As noted, the number of chapter 13 cases filed in the
21 division is high and the court has struggled with significant calendar congestion and resultant
22 delays to litigants. The court has promulgated local procedures to improve access to the court
23 and speed decision-making.

24 When a chapter 13 plan is filed in the San Jose Division, creditors are given notice of
25 the confirmation calendar to which that case has been assigned. Given the large number of

26 ⁸ A detailed description of these procedures is available at
27 <http://www.canb.uscourts.gov/procedure/san-jose/san-jose-chapter-13-procedures-and-forms-packet>

1 chapter 13 cases, it is not always possible for the court to consider in a meaningful way
2 objections filed by the Trustee and creditors at the initial confirmation hearing. As a result,
3 the Bankruptcy Court created a system by which initial confirmation hearings are held, at
4 which plans are confirmed only if they have not drawn an objection, the trustee has all
5 information required to recommend confirmation, and they otherwise comply with the
6 Bankruptcy Code. If an interested party interposes an objection, the court refers the case to
7 the Trustee's Pending List (the "TPL"). If a case is placed on the TPL, and the debtor
8 resolves outstanding objections, the Trustee restores the matter to the uncontested
9 confirmation hearing calendar. Parties can always specially set an unresolved objection to
10 confirmation for hearing when they are ready to argue the matter.

11 The initial confirmation hearing in *Vick* was held April 26, 2016. The initial
12 confirmation hearings in *Escarcega*, *Sisk*, *Mercado*, and *Candalla* were held May 19, 2016.
13 No one objected to confirmation in these cases. In each case, though, Debtors attached
14 additional provisions to the plan. The court directed the Trustee to move the cases to the TPL
15 to give the court an opportunity to determine if the plans complied with the Bankruptcy Code.

16 At the confirmation hearings, the court expressed its concerns about the nature of the
17 additional provisions and made some preliminary comments about the plans' confirmability.
18 Counsel were given an opportunity to respond. Because of the complexity of the issues, the
19 absence of a Trustee objection, and the need for certain factual findings, each case was
20 scheduled for an evidentiary hearing or trial on confirmation. In advance of the hearings, the
21 court issued orders directing counsel to address certain legal issues raised by the additional
22 provisions. The Debtors filed initial and supplemental briefs addressing those questions.⁹

23 ⁹ See *Vick*, 16-50401, "Order re Post-Trial Briefing," Docket # 25; *Escarcega*, 16-50368,
24 "Chapter 13 Plan Trial Scheduling Order," Docket # 42.

25 Attorney James S.K. Shulman is counsel for Debtors in two cases: *In re Eugene Edward Vick*,
26 Case No. 16-50401, and *In re Jeri Lyle Saldua Mercado*, Case No. 16-50651. Attorneys Jim
27 Gold and Norma Hammes are counsel for Debtors in three cases: *In re Dennis Michael*
Escarcega, Case No. 16-50368, *In re Mark Irvin Candalla*, Case No. 16-50659, and *In re*
28 *Nanette Marie Sisk*, Case no. 16-50548. The briefs filed by each counsel assert the same
arguments in each case represented by that counsel. References in this decision to positions

Having completed an evidentiary hearing in each case, the court now issues this Memorandum Decision.

D. The Court's Consideration of these Cases Complied with the Bankruptcy Code

Before discussing its conclusions, the court must address the argument advanced by counsel in the *Candalla*, *Escarcega*, and *Sisk* cases that the confirmation process employed by the court in these cases violates the Bankruptcy Code.¹⁰

Debtors first suggest it is not the court's place to substantively review plans as to which no interested party has objected.¹¹ They apparently believe the plans should be summarily confirmed given the absence of an objection. To comply, the Bankruptcy Court would be required to abdicate its duty to ensure that chapter 13 plans comply with the law, a duty that must be discharged *even where there is no objection to confirmation*. See *Espinosa*, 559 U.S. at 278, 130 S. Ct. 1367 at 1381 (stating, in the context of § 523(a)(8), that the bankruptcy court must make an “independent determination of undue hardship before a plan is confirmed, *even if the creditor fails to object or appear in the adversary proceeding.*”) (emphasis added).

Next, these Debtors argue that the delays of supplemental briefing and an evidentiary hearing “have postponed the opportunity for a substantive hearing on confirmation of the Debtor’s proposed plan well beyond the limit of 20 to 45 days past the § 341 meeting imposed by § 1324.”¹² Debtors misconstrue § 1324, which requires the court to convene a hearing on confirmation of the plan between 20 and 45 days after the meeting of creditors required by

asserted in the *Vick* and *Escarcega* pleadings are representative of the related briefs unless otherwise stated.

¹⁰ *Escarcega*, 16-50368, Docket # 46, page 9, lines 4-19.

¹¹ *Escarcega*, 16-50368, Docket # 46, page 3, line 23 – page 4, line 27.

¹² *Escarcega*, 16-50368, Docket # 46, page 9, lines 5-7.

1 § 341. *See* § 1324(b). Nothing in the statute requires a substantive or conclusive hearing
2 within this period, let alone a decision on confirmation. Beyond that, the argument misses the
3 point that the court held substantive hearings on confirmation in each of the affected cases on
4 May 19, 2016. Due to the uniform nature of the additional provisions, the legal issues raised,
5 and factual issues specific to each case, multiple initial hearings on confirmation were
6 addressed on this date. The record reflects that substantive discussion occurred in each of
7 these cases at that time, along with the hearing in the *Mercado* case on the same date.¹³ The
8 argument that the court has failed to comply with § 1324(b) lacks merit and is overruled.

9 Debtors further contend that placing cases with provisions that modify the Model Plan
10 on the TPL is tantamount to the adoption of a local rule that violates the Bankruptcy Code.
11 No one can reasonably argue that the adoption of a local rule that violates federal law is not
12 permissible. But we do not face that situation here. The court has a duty to consider whether
13 chapter 13 plans comply with the Bankruptcy Code and has adopted mechanisms to decide
14 that question. Because Debtors' argument depends on a conclusion that the plans at issue are
15 entitled to confirmation as a matter of law because the trustee has not objected—a point we do
16 not accept—the argument cannot be sustained.

17 **III. ADDITIONAL PROVISIONS ADDED TO MODEL PLAN**

18 A. Proposed Template of Additional Provisions

20 Debtors in the cases at bar started with the Model Plan. Each plan also includes
21 standardized modifications, which were added to the plan in section 5, denominated
22 “additional provisions.” The additional provisions drafted by counsel appear in a “check the
23 box” format. As initially filed, the additional provisions specified in each case were identical.
24 Due to subsequent amendments in *Vick* and *Mercado* the additional provisions are no longer

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27 ¹³ *Escarcega*, 16-50368, Docket # 41; *Candalla*, 16-50659, Docket # 24; *Sisk*, 16-50548,
28 Docket # 26; *Mercado*, 16-50651, Docket # 25.

1 identical. Nevertheless, the result sought by the various proposed changes to the Model Plan
2 do not materially differ.

3 The additional provisions that have been added to these plans were not previously
4 approved by the court nor are they part of the Model Plan in use across the district. Instead,
5 these provisions were drafted by Debtors' counsel to rectify perceived inadequacies in the
6 Model Plan. After drafting them, counsel circulated the provisions to the local debtors' bar as
7 an example of additional provisions that should be incorporated into their plans.¹⁴ According
8 to counsel, their intent was to create a template that "may be used for many Debtors with
9 differing, but commonly occurring, circumstances."¹⁵

10
11 B. The Trustee Approved the Additional Provisions in Advance
12

13 Counsel in these cases negotiated the use of additional provisions in advance with the
14 Trustee, who testified under oath in the *Escarcega* trial that she discussed the provisions with
15 counsel. She agreed that, if the provisions being advocated by counsel were employed to alter
16 the Model Plan, she would not object to confirmation. She reasoned that yielding to the
17 proposed additional provisions would avoid what she termed the "impactful" consequences of
18 *In re Flores*, 735 F.3d 855 (9th Cir. 2013). By this, she means that, without an objection to
19 confirmation, a plan has no minimum length for a below-median debtor. Debtors and the
20 Trustee are wrong about this.

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¹⁴ *Vick*, 16-50401, Docket # 14, page 5, lines 21-27.
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28 ¹⁵ *Vick*, 16-50401, Docket # 14, page 5, line 27 – p. 6, line 1.

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1 C. Some Chapter 13 Plans Confirmed in the San Jose Division Prior to
2 Implementation of the Model Plan Were Administered in Ways That Violated the
3 Bankruptcy Code

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5 Before turning to the changes Debtors are attempting to make to the new Model Plan,
6 it is helpful to understand how certain plans in the San Jose Division have been administered
7 in the recent past. Only with an understanding of existing practice is it possible to understand
8 the proposed additional provisions and how they violate the Bankruptcy Code.

9 Contrary to every other practice form plan previously used in this district, the prior
10 San Jose form plan included language referencing an “estimated” term.¹⁶ The commonly
11 used plan stated that disbursements on unsecured nonpriority claims would be paid “at a rate
12 of ____ cents on the dollar” for a term that was stated (e.g., 36 or 48, or 60 months), with a
13 proviso that the term was “estimated.” In other words, the practice was for a debtor to file a
14 plan providing for payments of \$____ for 60 months. The plan usually provided for a \$0
15 distribution to general unsecured creditors.¹⁷ The plan term, as noted, was estimated. After
16 the plans were confirmed and claims were filed, the Trustee would commence making
17 disbursements.

18 It has become clear that the plans were administered in a manner inconsistent with the
19 Bankruptcy Code. Once a debtor had completed payments to the Trustee sufficient to cover
20 administrative expenses, such as counsel’s fees, payment on secured debt (including arrears),
21 and priority claims (e.g. taxes), the plans were considered completed, discharges issued, and
22 the case closed. It did not matter if the plan had run the full “estimated” length or not. Thus,

23 ¹⁶ The prior San Jose plan provided at Section 2(d): “From the payments received, the Trustee
24 will make disbursements as follows: . . . (d) On allowed general unsecured claims as follows:
25 ____ at a rate of ____ cents on the dollar. The estimated term of the plan is ____ months
(percentage plan).”

26 ¹⁷ Alternatively, some plans would provide for a capped amount to be distributed to general
27 unsecured creditors. Presumably, this amount satisfied the best interests of creditors test in
28 § 1325(a)(4).

1 in some cases, plans terminated much earlier than their stated estimated length. The court is
2 aware of cases that lasted only 11, 24, or 36 months instead of the stated 60 months.¹⁸ This
3 occurred even though the court and, the court assumes, a creditor, would have deduced the
4 length would be closer to the stated estimated duration.

5 The early termination of these “estimated term” plans was accomplished without
6 compliance with the Bankruptcy Code. In these cases, when the Trustee determined that all
7 required payments had been completed, she filed a document called notice of plan completion
8 without notice to any affected creditors. At that point, the Clerk of Court processed the
9 debtor’s discharge. Later, the Trustee filed a final report and the case closed with the entry of
10 a final decree.

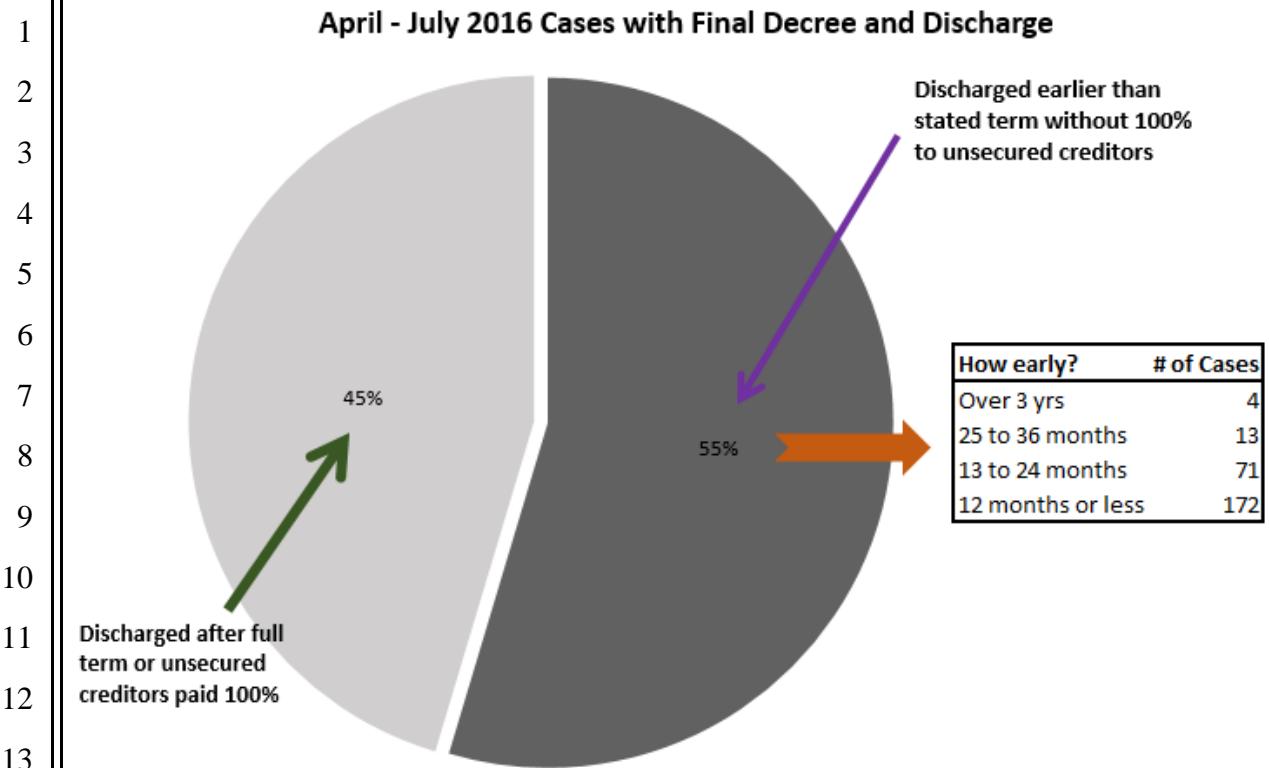
11 The routine early termination of chapter 13 plans does not appear to have been
12 actively concealed from the court, but the practice certainly was not made clear. Counsel and
13 the Trustee take the view that plans which include an estimated term can be concluded at any
14 point without notice to anyone.

15 To understand this practice better, the court reviewed cases assigned to Judges
16 Hammond and Johnson in which a final decree was entered in the San Jose Division between
17 April and July 2016. The primary source of information was the Chapter 13 Trustee’s Final
18 Report and Account filed contemporaneous to the submission of a proposed final decree.¹⁹
19 As illustrated in the following tables, a final decree was submitted for a total of 476 cases in
20 which a discharge was obtained. Of the cases in which a discharge was received, 55%, or 260
21 or the 476 cases, completed prior to their stated/estimated term. While many cases terminated
22 close to term, 30% of all cases terminated more than 6 months early and 10% of all cases
23 terminated more than 18 months early. Four cases terminated more than 3 years early, and
24 one of them terminated over 4 years early.

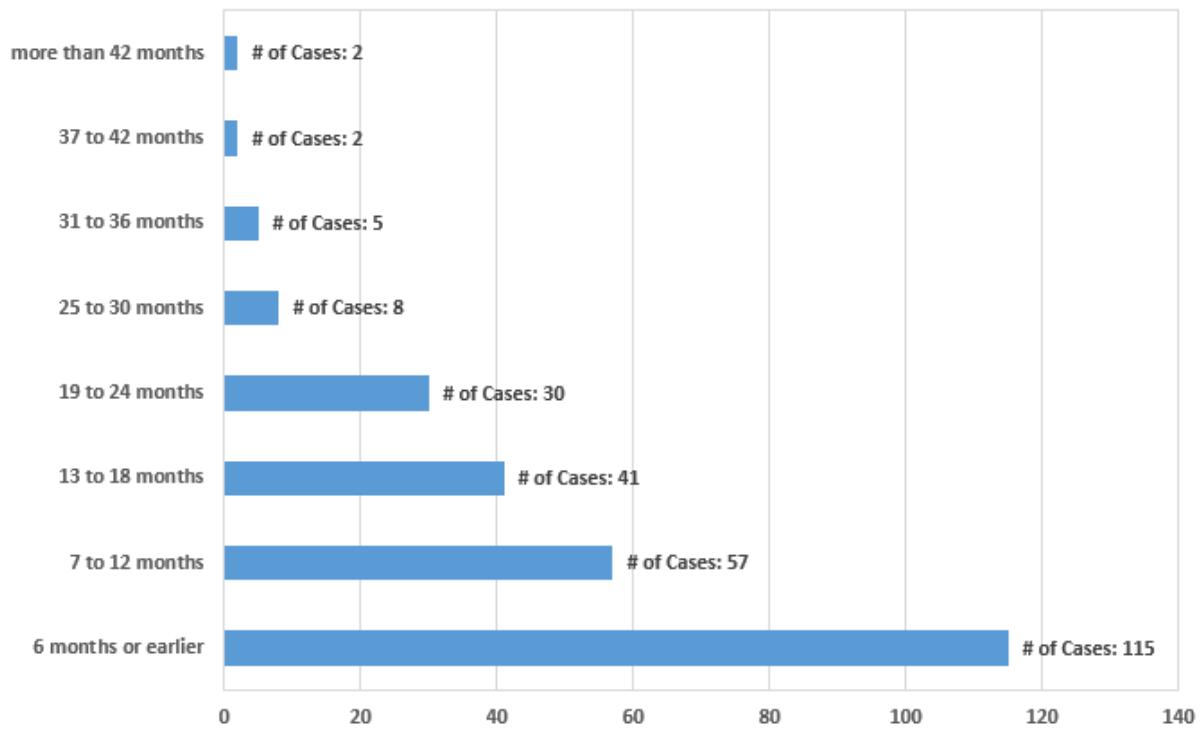
25
26 ¹⁸ Attached as Exhibit A is a spreadsheet detailing the cases supporting these findings.

27 ¹⁹ Filing of the Chapter 13 Trustee’s Final Report and Account is administrative in nature and
28 not subject to review or approval by the court.

UNITED STATES BANKRUPTCY COURT
for the Northern District of California



Early Discharge Without Full Payment to Unsecured Creditors
(6 month increments)



MEMORANDUM DECISION

1 In each of these cases, the holders of allowed, unsecured nonpriority claims either
2 received no distribution or, if the plan provided for a minimum distribution, they received the
3 stated minimum and nothing more. In none of these cases did the debtor or the Trustee file a
4 motion requesting approval of a modification of the duration of the confirmed plan to permit
5 its early termination and an early discharge without full or at least increased payment to
6 unsecured nonpriority creditors.

7 Why were so many plans terminating early? It is difficult to determine the precise
8 reason because an individual debtor's payment history does not appear in the record.

9 Nonetheless, the court's analysis reveals two principal reasons behind early terminations. In
10 some cases, the filed—and allowed—secured and priority claims sought lower amounts than
11 debtors estimated in their schedules.²⁰ In other cases debtors were able to pay more than the
12 required plan payment in some months, thus accelerating their performance.²¹ This second
13 theory rests on the premise that if the docket does not reflect changed claim amounts or other
14 activity then additional or higher payments are likely the cause.

15
16 D. The Additional Provisions Debtors Have Added to Their Plans Seek to
17 Perpetuate the Practice of Terminating Plans Early

18
19 Debtors intend the proposed additional provisions to continue the practice of
20 confirming plans with indeterminate lengths that can be terminated early upon payment.
21 According to Debtor's briefs, “[t]he additional provisions proposed by Debtor's plan do not
22 produce a result that is different from plans which were routinely confirmed by this Court
23 since ascending to the bench in the San Jose.”

24 The court, recognizing that purpose, offered Debtors the opportunity to brief whether a
25 debtor's use of an *estimated* plan length authorizes the early termination of a plan without the

26 _____
27 ²⁰ See for example *In re Garcia*, 12-57725; *In re Pardes*, 12-51535.
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²¹ See for example *In re Cooper*, 12-55539; *In re Murga*, 12-56248.

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1 necessity of filing a motion to modify. In response, Debtors confirm their view that their use
2 of an *estimated* plan length authorizes the completion of the plan once the debtor completes
3 the estimated disbursements, without requiring a motion to modify.²² Addressing the
4 modified version of the additional provisions, Debtors also argue that if a plan states that it
5 will be deemed completed once all allowed secured and priority claims and administrative
6 expenses are paid then it cannot result in an early termination: therefore, a motion to modify
7 is not required.²³ This is consistent with the Trustee's testimony regarding termination of
8 plans.²⁴

9

10 E. Examination of Proposed Additional Provisions §§ 5.02 and 5.03

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12 To understand the argument Debtors are making, it is necessary to review the
13 proposed changes they have offered to the Model Plan. An example of the initial additional
14 provisions from *Escarcega* are attached as Exhibit B.²⁵

15 The Debtors have proposed two additional provisions which delete the standard Model
16 Plan provisions and replace them with different provisions. The two provisions are found at
17 § 5.02, which modifies § 1.01(a) of the Model Plan, and § 5.03, which modifies § 2.12 of the
18 Model Plan. Plans incorporating these additional provisions do not comply with §§ 1328(a)

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20 ²² *Escarcega*, 16-50368, Docket # 46, page 20, lines 26-27, section heading, emphasis in the
original.

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22 ²³ *Vick*, 16-50401, Docket # 27, page 16, lines 18-20.

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24 ²⁴ *Escarcega*, 16-50368, Docket # 54, Transcript of Trial Proceedings, p. 47, lines 10-24.

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26 At the initial confirmation hearing in *Vick*, the court informed counsel that only those
additional provisions applicable to the Debtor's plan would be considered. See *Vick*,
16-50401, April 26, 2016 hearing transcript, pages 6-8, Docket #28. The Debtors in *Vick* and
Mercado filed amended plans with revised additional provisions limited to modifications
specific to their plan. An example of the amended additional provisions from *Vick* is attached
as Exhibit C. The court has made every effort to use the most recent version of the plan filed
in these cases.

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and 1329 and, therefore, do not satisfy § 1325(a)(1) which conditions confirmation on a plan's complying with the provisions of chapter 13.

1. Section 5.02 Additional Provisions

Section 1.01(a) of the Model Plan requires debtors to state the number of months they believe will be required to complete the plan, as well as information about monthly payments that will be made to the Trustee to complete the plan.

1.01 Plan payments. To complete this plan, Debtor shall:

- a. Pay to Trustee \$____ per month for ____ months from the following sources:
(describe, such as wages, rental income, etc.): _____.
Debtor shall after ____ months, increase the monthly payment to \$____ for
months.

Debtors have submitted a plan that seeks to obfuscate this provision. Their plan provides:

5.02 Section 1 of the plan is modified as follows:

- a. The length of the plan as reflected in the cumulative terms of the monthly payments provided in Section 1.01(a) *is the estimated length of the plan.*
[Escarcega, Sisk, and Candalla] (emphasis added)

OR

5.02 Section 1 of the plan is modified as follows:

Notwithstanding Section 1.01(a), *once the debtor has paid all allowed secured and priority claims and administrative expenses* as provided for in this plan, *the plan shall be deemed completed* and no further payments to the Trustee shall be required. [Vick and Mercado] (emphasis added)

1 In *Escarcega, Sisk, and Candalla*, Debtors have inserted a phrase that does not appear
2 in the original Model Plan—that the length of the plans is only *estimated*. In *Vick* and
3 *Mercado*, Debtors propose a different formulation—that payments to the Trustee will cease
4 just as soon as certain required payments are completed, including those to administrative
5 expense claimants, priority claimants, and secured creditors. Unsecured nonpriority creditors
6 are deliberately omitted from this formulation.

7

8 2. Section 5.03 Additional Provisions

9

10 In tandem with the additional provisions altering the term, Debtors have included an
11 additional provision limiting distribution to unsecured nonpriority creditors beyond that
12 provided in the Model Plan. The Model Plan provides:

13

14 **2.12 Class 7: All other unsecured claims.** These claims, including the unsecured portion
15 of secured recourse claims not entitled to priority, total approximately \$_____. The funds
16 remaining after disbursements have been made to pay all administrative expense claims and
17 other creditors provided for in this plan are to be distributed on a pro-rata basis to Class 7
18 claimants.

19 [select one of the following options:]

20 **Percent Plan.** Class 7 claimants will receive no less than ____% of their
21 allowed claims through this plan.

22 **Pot Plan.** Class 7 claimants are expected to receive ____ % of their allowed
23 claims through this plan.

24 By this formulation, the Model Plan communicates to creditors the total amount of
25 unsecured claims anticipated by the debtor and allows the debtor to estimate the projected
26 distribution under a percentage or pot plan. But it does not prohibit unsecured nonpriority
27

28
MEMORANDUM DECISION

1 creditors from receiving a greater recovery than estimated by the debtor. If additional funds
2 are received by the Trustee, they may be distributed to unsecured nonpriority creditors.

3 Debtors have determined to alter the result under their proposed plans. They leave
4 Section 2.12's options blank and propose additional provision § 5.03. Their proposed plan
5 language has been deliberately calculated to prohibit the Trustee from distributing excess
6 funds.²⁶ Under the prior San Jose form plan, any additional funds received above the stated
7 percent or amount were returned to debtors unless *the Trustee* obtained an order modifying
8 the plan authorizing distribution of the funds. Debtors hope to perpetuate this practice by
9 adding the following provisions:

10 **5.03.** Section 2 of the plan is modified as follows:
11 ...

- 12 a. Section 2.12 is modified to add the following, if checked here:
13 ✓ Class 7 claimants shall receive an aggregate dividend of \$____0____, which amount
14 can be increased by up to \$1.00 to an amount sufficient for the trustee to
15 administer payments on these claims, which shall be shared pro-rata based on
16 the amounts of their respective allowed nonpriority unsecured claims.
17 [*Escarcega, Sisk, Candalla*]

18 OR

19 **5.03.** Section 2.12 of the plan is modified to add the following:
20 Class 7 claimants shall receive an aggregate dividend of \$____0____. [*Vick, Mercado*]

21 Debtors' stated reason for making this revision rests on their contention that the Model
22 Plan "substantively abridges the Debtor's rights" by requiring a debtor "to make payments to
23 general unsecured creditors in excess of the amounts required by the Bankruptcy Code" when

24
25 ²⁶ It is possible to interpret this language in a less constrictive manner, but here, the Trustee
26 applies the same interpretation. For example, the Trustee moved to modify a debtor's plan to
27 change it from a 0% dividend to unsecured nonpriority creditors to provide for distribution of
28 \$18,441.28 to this group of creditors. The motion stated it would "allow the Trustee to
distribute funds on hand, as well as remaining plan payments to be made, in accordance with
the Plan as modified." *In re Stewart*, 13-52775, Docket # 76, pages 1-2 and 6, lines 12-16.

1 the debtor is entitled “to propose a zero dollar dividend plan.”²⁷ They further assert that if a
2 “plan proposes a zero dollar dividend, there is no further reason for that creditor to be
3 interested in the plan, unless the creditor has specific knowledge about the finances of the
4 debtor that causes the creditor to question that result. . . . Zero dollars paid over 48 months or
5 zero dollars over 60 months have the same impact on the creditor. Neither number of months
6 is more meaningful than the other; zero dollars is still zero dollars.”²⁸

7

8 F. The Proposed Additional Provisions Violate the Bankruptcy Code

9

10 In their confirmation briefs, Debtors correctly assert that §§ 1322 and 1325 do not
11 require a plan to provide a fixed term or a minimum distribution to unsecured nonpriority
12 creditors in the absence of an objection to confirmation. They further argue that the precise
13 length of the plan cannot be stated at the outset of the case. Subsequent events, such as the
14 allowed amount of filed claims and changes in the Trustee’s fee bear upon the time needed to
15 complete a plan. For that reason, they argue that an estimated term is not only advisable but
16 necessary.²⁹ They assert they are entitled to confirm plans with indeterminate lengths based
17 on this contention.

18 Counsel correctly point out that the Trustee’s fee can fluctuate and that claims can
19 come in higher or lower than anticipated. As a result, plans may need to be adjusted to
20 properly pay the affected claimants. But this eventuality cannot logically support a
21 conclusion that a plan *never has to have a specified length*. The proper way to address these
22 issues is to *modify the plan* using § 1329.

23

24

25 ²⁷ *Vick*, 16-50401, Docket # 27, page 11, lines 21-25.

26 ²⁸ *Escarcega*, 16-50368, Docket # 46, page 14, lines 19-25.

27 ²⁹ *Vick*, 16-50401, Docket # 27, pages 10-11; *Escarcega*, 16-50368, Docket # 46, pages 11-
28 14.

1 The proposed National Plan, for example, allows an extension of the plan beyond the
2 stated term but no longer than 60 months.³⁰ The language in the National Plan is consistent
3 with § 1322(d) which provides an outside limit of 3 or 5 years on a plan, depending on
4 debtor's current monthly income. It also affords debtors additional time if claims are filed
5 higher than anticipated or the Trustee's fee increases. Further, this court also recognizes the
6 need for flexibility due to difficulties encountered by debtors during the plan term; for that
7 reason it has issued standing orders intended to facilitate successful completion of a plan.³¹ If
8 a debtor desires further adjustments then § 1329 offers a mechanism for requesting such
9 relief.

10 But to be clear, the Bankruptcy Code anticipates that a plan may need to be modified.
11 It provides, for example, that at any time after confirmation but before the completion of
12 payments under a plan, the plan may be modified, upon the request of the debtor, trustee, or
13 the holder of an allowed unsecured claim. § 1329(a). As relevant here, a plan may be
14 modified to extend or reduce the time for payments under the plan. § 1329(a)(2). Plan
15 modifications are subject to the plan requirements set forth in §§ 1322(a), 1322(b), and
16 § 1323(c), as well as the requirements of § 1325(a). § 1329(b)(1). Plan modification requires
17 that notice and an opportunity to be heard be provided to the trustee and all concerned
18 creditors. Fed. R. Bankr. P. 3015(g). The trustee or a party who is adversely affected by the

19
20³⁰ Section 2.1 of the proposed National Plan provides:

21 **Debtor(s) will make regular payments to the trustee as follows:**

22 \$ _____ per ____ for _____ months . . .

23 If fewer than 60 months of payments are specified, additional monthly payments will
24 be made to the extent necessary to make the payments to creditors specified in this
25 plan.

26 ³¹ See "Procedures for Suspending Payments in Chapter 13," approved July 1, 2015, and
27 "Distribution Order Regarding Model Chapter 13 Plan February 1, 2016," dated February 1,
28 2016. These documents are available on the court's website at
<http://www.canb.uscourts.gov/procedures/san-jose>.

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1 modification may object, allowing the “court to consider the debtor’s good faith in proposing
2 early payoff modifications, as well as issues as to the debtor’s overall financial circumstances,
3 future earnings and income, and the elimination of future risks of nonperformance.” *In re*
4 *Schiffman*, 338 B.R. 422, 435 (Bankr. D. Or. 2006).

5
6 1. Self-Modifying Plans are Prohibited

7
8 Debtor’s attempt to construct a plan that authorizes modifications without notice to
9 parties in interest eliminates creditor’s rights to object to the modification and flouts § 1329.
10 In *In re Anderson*, the chapter 13 trustee required debtors to supply him with a “Best Efforts
11 Certification” as a condition of plan confirmation. 21 F.3d 355, 358 (9th Cir. 1994). This
12 certification required debtors to pay their actual disposable income to the trustee rather than
13 the projected disposable income as required by § 1325(b)(1)(B) (superseded). The debtors
14 objected, contending this amounted to a requirement that their plan payments adjust regularly
15 based on the trustee’s calculations of their income. The Ninth Circuit rejected self-modifying
16 plans in *Anderson*, concluding that the Bankruptcy Code prohibits such plans as contrary to
17 congressional intent:

18 We reject the Trustee’s argument that he may in this fashion extinguish the
19 Andersons’ statutory right to ask the bankruptcy court to disapprove a
20 modification of the plan proposed by the Trustee. By providing in § 1329 a
21 mechanism to modify a confirmed plan, Congress plainly did not intend to
22 vest trustees with such unfettered authority. *Cf. United States v.*
Merhmanesh, 689 F.2d 822, 829 (9th Cir. 1982) (“We may not construe a
statute so to make any part of it mere surplusage”).

23 *Id.* (internal footnotes omitted).

24 Debtors cavalierly state that creditors are not entitled to any notice of an early
25 termination if the plan paid them nothing. Why would a creditor care, they argue, if the
26 creditor received \$0 in 30 months or \$0 in 60 months. This line of argument is both illogical
27 and contrary to the exacting provisions of the Bankruptcy Code.
28

MEMORANDUM DECISION

1 It is illogical because it stands to reason that creditors would be interested to know
2 why a debtor who proposed a plan of 60 months, with no payments to unsecured creditors,
3 was able to pay that plan off in only 30 months and receive a discharge. Has this debtor
4 gotten a new job or found assets that were not disclosed? Moreover, the creditor may
5 question whether the plan was proposed in good faith – and they are not required to have
6 “specific knowledge about the finances of the debtor” to raise such a concern.

7 The argument makes little sense from a statutory standpoint, either. Congress
8 included § 1329(a) in the Bankruptcy Code to allow the trustee and unsecured creditors to
9 move to modify a plan. Such a motion presupposes that the facts of a debtor’s case have
10 changed since the time of filing or confirmation. The statute permits a reevaluation of the
11 case to deal with changing facts. It is simply not true that a debtor has no obligation to give
12 notice to creditors of his intent to terminate a chapter 13 plan early. As the Bankruptcy Court
13 noted in *Schiffman*: “[T]here is nothing inequitable or contrary to the Bankruptcy Code in
14 requiring that debtors go through the plan modification process in order to pay their chapter
15 13 plans off early without paying allowed creditor claims in full.” *Schiffman*, 338 B.R. at
16 435.

17 2. Confirmation of a Plan is not Res Judicata During the Case

18 Debtors further argue that after confirmation of a chapter 13 plan that calls for no
19 payments to unsecured creditors the interests of those creditors in the chapter 13 case should
20 be considered terminated. They contend “Unless the unsecured creditor objects to the plan
21 under § 1325(b) for cause, the term of the plan will be of no concern to the creditor.”³²
22 (emphasis in original). Under this theory, upon confirmation of the original plan in a chapter
23 13 case, and assuming that plan called for no payments to those creditors, they would have no
24
25
26
27

28

³² *Escarcega*, 16-50368, Docket # 46, page 14, lines 21-23.

1 further interest in the plan as a legal matter. Debtors apparently arrive at this conclusion
2 through the principles of res judicata. None of this is correct.

3 Res judicata is a legal principle that bars relitigation of a matter that was brought to
4 judgment in a different case or controversy by a court of competent jurisdiction. The doctrine
5 has no application to this case. *See Arizona v. California*, 460 U.S. 605, 619, 103 S. Ct. 1382,
6 1391 (1983), *decision supplemented*, 466 U.S. 144, 104 S. Ct. 1900 (1984) (“It is clear that
7 res judicata and collateral estoppel do not apply if a party moves the rendering court in the
8 same proceeding to correct or modify its judgment.”)

9 Section 1327(a) does not support Debtors’ argument, either. That section provides
10 that a plan is binding on debtors and creditors provided for by the plan. Thus, the plan
11 becomes law of the case, subject to the possibility of modification pursuant to § 1329(a).
12 Section 1329(a) provides a statutory mechanism to modify confirmed plans to increase or
13 reduce plan payments, to change the timing of payments, and to make other alterations. It
14 makes no sense that those modifications would be authorized if particular creditors were
15 barred from objecting because they failed to object to *an entirely different plan*. Thus, while
16 one plan may be acceptable to the creditors, a later plan based on changes in income, assets,
17 or other factors, may not. In any event, those creditors remain involved because the court
18 must always pass on the good faith of any modified plan. *In re Sunahara*, 326 B.R. 768, 781
19 (B.A.P. 9th Cir. 2005) (“In determining whether to authorize a modification that reduces a
20 plan term to less than 36 months without full payment of allowed claims, the bankruptcy court
21 should carefully consider whether the modification has been proposed in good faith.”).

22 None of this prohibits a debtor from filing a motion to modify. A debtor may file a
23 motion to modify any time it is warranted. The motion will be reviewed by the Trustee, and
24 ultimately the court, to ensure that it satisfies the requirements of § 1329(b) and *Sunahara*.
25 Here, we simply hold that Debtors cannot foreclose creditors’ and the Trustee’s rights to
26 object by failing to move for modification when necessary.

27 The practice that has developed in this division is contrary to the Bankruptcy Code
28 and will not be ratified by this court. Additional Provisions 5.02 and 5.03 are intended to

MEMORANDUM DECISION

1 implement administration of a chapter 13 case in a manner that is contrary to § 1329. Hence,
2 this court finds that these additional provisions do not comply with the provisions of chapter
3 13, specifically § 1329, and render the plan unconfirmable pursuant to § 1325(a)(1).

4

5 G. Chapter 13 Plans are Subject to a Temporal Requirement

6

7 It is important to address counsel's express argument that debtors with below median
8 incomes need not provide any term to their chapter 13 plans. *Because of the way the practice*
9 *has developed in this division*, we determine that each and every plan shall have a stated
10 length and any substantive variation from that length will require a motion to modify.

11 Although not cited by Debtors, several well-reasoned decisions have concluded that a chapter
12 13 plan must run to its stated length.

13 In *In re Fridley*, the Bankruptcy Appellate Panel ("BAP") found that §§ 1328(a) and
14 1329(a) confer an implied temporal requirement that a plan remain in effect for its designated
15 duration unless formally modified. 380 B.R. 538 (B.A.P. 9th Cir. 2007). *Fridley* was a post-
16 BAPCPA³³ case in which debtors had below median income and proposed a plan with a 36
17 month applicable commitment period. The plan provided no payment to unsecured creditors.
18 Having experienced a dramatic rise in income post-confirmation, debtors paid off their plan in
19 14 months and sought a discharge. The trustee, who had not yet filed a motion to modify the
20 plan, objected, contending that debtors' plan required they remain in chapter 13 for the
21 minimum 36 months. Obviously, if that were so, the trustee would have time to modify the
22 plan and capture payments for unsecured creditors not anticipated by the confirmed plan.

23

24 ³³ The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA").
25 Pub.L. No. 109-8, 119 Stat. 23 (2005). As recognized by the Supreme Court: " 'Congress
26 enacted [BAPCPA] to correct perceived abuses of the bankruptcy system.' In particular,
27 Congress adopted the means test—'[t]he heart of [BAPCPA's] consumer bankruptcy
reforms,' ... to help ensure that debtors who *can* pay creditors *do* pay them ... [U]nder
BAPCPA, 'debtors [will] repay creditors the maximum they can afford.' " *Ransom v. FIA*
28 *Card Servs.*, N.A., 562 U.S. 61, 64, 131 S. Ct. 716, 721 (2011)(internal citations omitted).

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1 The BAP affirmed the bankruptcy court's order denying the motion for entry of a
2 discharge. It concluded that debtors' confirmed plan required a 36 month term. The
3 confirmed plan specified that length. To shorten the plan's length, a motion to modify under
4 § 1329(a) would be required.

5 The BAP observed that under § 1328(a), a discharge is permissible "as soon as
6 practicable after completion by debtor of all payments under the plan." Plan modifications,
7 however, are authorized "at any time after confirmation of the plan but before the completion
8 of payments under such plan." § 1329(a). This scheme set up a sort of race, the BAP
9 concluded, for the discharge of unsecured debt, when a debtor's income has risen.

10 Thus, part of the statutory bargain inherent in chapter 13 is that the debtors
11 must, for the prescribed life of the plan, run the gauntlet of exposure to
12 trustee or creditor requests to increase payments. BAPCPA, by creating a
13 debtor's duty to make information available to those who could propose
modifications, actually reinforced this aspect of the statutory bargain.

14 A debtor desiring to prepay a chapter 13 plan and obtain an early discharge
15 without paying allowed unsecured claims in full must follow the § 1329
modification procedure prescribed by Rule 3015(g). In exchange for a
16 § 1328(a) discharge of more debts than can be discharged in chapter 7, the
debtor's increases in income are exposed to the risk of being captured by
17 way of § 1329 modifications proposed by the trustee or an unsecured
creditor. The debtor cannot short-circuit that exposure merely by
18 prepayment, but rather must obtain a § 1329 plan modification after having
given the notice required by Rule 3015(g).

21 *Fridley*, 380 B.R. at 544 (notes omitted).

22 *Fridley* is consistent with pre-BAPCPA³⁴ cases in which a debtor sought to prepay and
23 terminate a plan early through a refinance—requesting to pay unsecured creditors their "plan
24 amount" but not the full amount of their claims.

25
26

³⁴ BAPCPA contained a number of amendments to chapter 13. But neither §§ 1328(a) nor
1329 were amended. Further § 1325(a)(3) remains the same, requiring a plan to be proposed
in good faith. Section 1329(b)(1) incorporates this section into the standards applicable for
27 approval of a motion to modify.
28

1 *In re Sunahara*, 326 B.R. at 773, addressed whether the “three-year period” provided
2 in then § 1325(b)(1)(B) was “a measure of the value that creditors must receive under the
3 plan” (as argued by the debtor) or “a measure of the lapse of time that must occur” (as argued
4 by the trustee). The BAP held that the three-year period was temporal but that a debtor could
5 seek to modify the plan pursuant to § 1329 and that while the disposable income test does not
6 apply to the motion to modify, the good faith standard of § 1325(a)(3) does. *Id.* at 781-82.

7 Similarly, *In re Keller*, 329 B.R. 697 (Bankr. E.D. Cal. 2005), arose out of a case with
8 a plan that called for 48 months of payments and a 31.5% dividend to unsecured creditors.
9 The debtors sought to refinance their home and to pay off their chapter 13 plan in the 14th
10 month of the plan. The bankruptcy court analyzed this question: “[A]fter having made only
11 14 of the 48 monthly payments the plan requires them to make, the debtors wish to “pay off”
12 their plan and thereby preclude the trustee and unsecured creditors from ever modifying their
13 plan. May they do so?” *Id.* at 699. The court concluded the debtors’ proposal could not be
14 approved.

15 The court observed that the attempt to alter a confirmed plan in this fashion was
16 inconsistent with the way plans are evaluated and confirmed in the first instance. The court
17 noted that when a plan is proposed, a debtor must demonstrate that it provides for a means of
18 execution, respects the rights of secured creditors, and is proposed in good faith. “It makes
19 little sense to require that a plan specify how it will be funded, and to require regular monthly
20 payments that continue for at least 3 years, then verify that the debtor has the ability to make
21 such payments only to permit the debtor to perform differently than required by the plan.” *Id.*
22 at 700.

23 Subsequently, the Ninth Circuit endorsed *Fridley*’s determination that a “minimum
24 duration for chapter 13 plans is crucial to an important purpose of § 1329’s modification
25 process: to ensure that unsecured creditors have a mechanism for seeking increased (that is,
26 non-zero) payments if a debtor’s financial circumstances improve unexpectedly.” *In re*
27 *Flores*, 753 F. 3d 855, 860 (9th Cir. 2013) (en banc) (citing *Fridley*). Applying § 1329 to the
28 applicable commitment period required by § 1325(b)(1)(B), the Flores court found that

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1 “creditors’ opportunity to seek increased payments that correspond to changed circumstances
2 would be undermined by an interpretation of § 1325(b)(1)(B) that relieves debtors from a
3 minimum plan duration merely because they have no projected disposable income at the time
4 of plan confirmation.” *Id.*

5 One might reasonably argue the cases discussed above are different from the cases
6 under submission because in the cases under submission, Debtors did not specify a particular
7 length. The court cannot accept that argument. These decisions stand for the central
8 proposition that a debtor who proposes a plan must perform under that plan over the term of
9 the plan. And, if the debtor’s circumstances change, creditors or the trustee are entitled to ask
10 that the plan be modified.

11 Here, Debtors’ counsel—and the Trustee in this division—assert that because there is
12 no objection to confirmation by the Trustee (or creditors), there is no applicable commitment
13 period.³⁵ Thus, they contend that they can terminate a plan at any point after the payments
14 required under that plan have been completed. In other words, so long as there is no
15 objection, there is no applicable commitment period, and the plans can terminate at any time
16 and without modification. Because the plan, as they have revised it and as they conceive of it,
17 contains no obligatory term, this reasoning cannot come into play.

18 Applying their interpretation to *Mercado* illustrates the error in this approach. Mr.
19 Mercado is a married man who filed separately. The income of his non-filing spouse is
20 figured into the determination of whether he is an above or below median debtor, and into the
21 calculation of his disposable income.³⁶ The Mercados’ recently had a baby and Ms. Mercado
22 is currently caring for their new child and is not employed. As a result, Mr. Mercado is a
23 below median income debtor, and the maximum plan length he is required to propose is 36

24³⁵ During the hearings, counsel for *Escarcega* argued that only certain objections by the
25 Trustee or creditors may trigger the applicable commitment period. As no objections were
26 filed in these cases, we do not decide whether an objection must be filed pursuant to § 1325(a)
or (b) in order for the applicable commitment period to apply.

27³⁶ See § 521, FRBP 1007, Instruction to Bankruptcy Forms of Individuals re Official Form
28 106I, “Schedule I: Your income”.

1 months. Mr. Mercado proposes paying \$175 per month for 36 months, for a total of \$6,300
2 into his plan. At trial, he testified that the couple anticipates Ms. Mercado will return to work
3 as a nurse. So, while their combined income is now below median income, it is anticipated to
4 increase substantially soon – and certainly within a 36 month plan period. As a result of the
5 additional provisions, and their past application in this division, the Mercados would be able
6 to take Ms. Mercado's initial paychecks, apply them to the plan, and obtain a discharge
7 without notice of a proposed modification and the opportunity for unsecured creditors or the
8 trustee to object. This eliminates any opportunity for unsecured creditors to receive a
9 distribution despite their increased income. Further, the case will be discharged and closed by
10 the time the Mercados are required to provide tax returns to the Trustee evidencing their
11 increased income.

12 This turns the Bankruptcy Code on its head. As the BAP described in *Fridley*, a
13 debtor is entitled to chapter 13 relief and a discharge if the statutory standards are met. The
14 mechanism of the Bankruptcy Code, read fairly, provides that a debtor will specify a length
15 for their plan and will carry that plan out. If, during the life of the plan, modifications are
16 warranted, they should be made. Once a motion to modify has been filed, the Trustee has a
17 duty to ensure the modified plan complies with the requirements incorporated by § 1329(b),
18 including that the modification is proposed in good faith. And as with confirmation, the court
19 has an independent duty to evaluate these motions to determine if they are consistent with the
20 law.

21 To be clear, the temporal requirement we find is distinct from the applicable
22 commitment period imposed by § 1325(b) following an objection to confirmation. The
23 bedrock of this temporal requirement is found in §§ 1328(a) and 1329(b), discussed above.

24 Having chosen to file chapter 13 and receive its benefits, a debtor may not draft a plan
25 that makes the careful structure and protections of the Bankruptcy Code ephemeral. Altering
26 the Model Plan so as to create an illusory term, obtaining the Trustee's agreement to the
27 additional provisions so as to avoid an objection and application of § 1325(b)'s applicable
28 commitment period, and then terminating the plan earlier than its stated term without a motion

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1 to modify does just that. Again, this court finds that the application of additional provisions
2 5.02 and 5.03 do not comply with the provisions of chapter 13, specifically §§ 1328(a) and
3 1329, rendering the plan unconfirmable pursuant to § 1325(a)(1). Further, the court finds the
4 additional provisions to the plans are not proposed in good faith, as required by § 1325(a)(3).

5

6 H. Improper Completion of the Model Plan

7

8 Before considering the remaining additional provisions, we must first address how
9 Section 1.01(a) of the Model Plan is to be completed. This section asks a debtor to describe
10 the source of plan payments and offers examples such as wages, rental income, etc. Instead of
11 stating the source of funds, each Debtor initially completed the plan with “As shown on
12 Schedule I.” Schedule I is an official form required to be filed by all debtors with their
13 petition or shortly thereafter. It provides information on the amount and sources of a debtor’s
14 income. But unlike the plan, Schedule I is not served on all creditors.

15 Completing Section 1.01(a) with “as shown on Schedule I” may technically satisfy the
16 form. Yet it is counter to one of the purposes of the Model Plan – to provide a single
17 document setting forth information sufficient to support its feasibility and to satisfy the other
18 confirmation requirements. This issue was raised at the initial hearing on plan confirmation in
19 *Vick*. The *Vick* and *Mercado* plans have been amended accordingly.

20 The plans of *Escarcega*, *Candalla*, and *Sisk* continue to provide that the source of
21 funds is as shown on Schedule I. Because creditors have not been served with a copy of
22 Schedule I, these plans, together with Schedule I, will need to be served on all creditors before
23 they can be confirmed. Preferably, the Debtors will amend their plans to include the required
24 information. In the future, plans that refer to schedules that are not served will not be
25 approved.

26 Similarly, *Escarcega* states that the amount of his plan payment will increase twice
27 over the term of his plan. However, he adds the second increase in an additional provision.
28 The blank provided in section 1.01(a) may be extended to state as many changes in payment

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1 as are required. Again, for ease of reference the scope of plan payments should be included in
2 this provision without reference to another section of the plan.

3

4 I. Remaining Additional Provisions

5

6 1. Section 5.01 – MMM Program

7

8 Debtors filed an Additional Provision 5.01 stating that: “Debtor does not elect to
9 participate in this Court’s Mortgage Modification Mediation (MMM) Program pursuant to
10 General Order 29.” This provision is unnecessary as the Model Plan does not default to or
11 require participation in the MMM Program. If a debtor chooses to participate in the MMM
12 Program, then an Additional Provision provided by the court is required to be included in the
13 plan (the “MMM Provision”). The required MMM Provision is available on the Court’s
14 website.

15 Although unnecessary, this Additional Provision does not interfere with confirmation.
16 Going forward, if a debtor elects to participate in the MMM Program, the plan must include
17 the MMM Provision. If a debtor chooses not to participate in the MMM Program, they may
18 either make no mention of it or include a provision stating that they elect not to participate.
19 Only those debtors that expressly include the MMM Provision will participate in the MMM
20 Program.

21 Neither contested confirmation nor evidentiary hearings will be required for plans that
22 include either of these references to the MMM Program as an Additional Provision.

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MEMORANDUM DECISION

1 2. Section 5.02 b. – Deletion of § 1.01(c)

3 In a case in which there is an applicable commitment period, Section 1.01(c) provides
4 the required minimum term. It provides:

5 **1.01 c.** The monthly plan payments will continue for ____ months unless all unsecured
6 claims are fully paid within a shorter period of time. This plan cannot propose
7 monthly payments beyond 60 months.
8

9 Debtors propose Additional Provision 5.02(b) that deletes the first sentence of this
10 section. That is unnecessary.

11 Many cases do not have an applicable commitment period. In these cases, the blank
12 may be completed with “N/A.” Yet many cases do have an applicable commitment period as
13 a result of an objection by the Trustee or by the holder of an allowed unsecured claim. *See*
14 § 1329(b). At the filing of their plan, a debtor is unlikely to anticipate an objection, thus
15 “N/A” is an appropriate response. If the applicable commitment period is triggered, then the
16 debtor can file an amended plan with the appropriate term.
17

18 Deleting the sentence does not provide greater protection or clarification than stating
19 “N/A.” Instead, it is more likely to cause confusion. Even more, having provisions regarding
20 the applicable commitment period in two sections of the plan is likely to create inconsistent
21 revisions and unnecessary errors. For these reasons, the court declines to approve Additional
22 Provision 5.02(b).

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MEMORANDUM DECISION

1 3. Deleting § 2.08 Regarding Loan Modifications

2
3 Included in the initial additional provisions is a request to delete Section 2.08 of the
4 Model Plan,³⁷ which provides for information related to a loan modification that a debtor is
5 pursuing outside of the MMM program. *Escarcega, Candalla, and Sisk* seek to delete this
6 provision, because they are not seeking a loan modification. As with the remainder of the
7 Model Plan, sections that are not relevant to a debtor's case may be left blank. For example,
8 *Candalla* left Sections 2.04, 2.06, and 2.07 blank, or stated none, but he only seeks to delete
9 Section 2.08. Accordingly, this Additional Provision is unnecessary and likely to cause
10 confusion based on the inconsistency in how a blank section is interpreted. On this basis, the
11 court declines to approve the Additional Provision seeking to delete Section 2.08.

12
13 4. Adding Additional Provisions Requiring 100% Payment or Interest on
14 Unsecured Nonpriority Claims

15
16 The initial additional provisions include options to check a box indicating that "Class
17 claimants shall receive 100% payment on their allowed nonpriority unsecured claims" and
18 that "Interest shall accrue and be paid on all allowed unsecured claims at the federal judgment
19 interest rate of ____%." As none of these Debtors seeks to pay their general unsecured
20 creditors 100% of their allowed claims or interest, these provisions are not relevant to these
21 cases and will not be approved. In a case in which a debtor's plan provides or requires such
22 treatment, an additional provision so stating is likely to be appropriate. When relevant to the
23 facts of the case, that issue may be presented to the court for review at a hearing on
24 confirmation.

25
26 _____
27 ³⁷ As a result of *Vick* and *Mercado* filing an amended plan with additional provisions relevant
28 only to their cases this additional provision is only included in the *Escarcega, Candalla, and Sisk* cases. To avoid confusion, the provision is referenced by Model Plan section.

1 5. Section 5.04 – Referencing § 1328(a)

2
3 Additional Provision 5.03 seeks to amend Section 4.03 to change a reference from
4 § 1328 to § 1328(a). The Model Plan states:

5
6 **4.03 Impermissible Provisions.** Notwithstanding any other term in this plan, Debtor does
7 not seek through the confirmation and completion of this plan either a determination of the
8 dischargeability of any debt or the discharge of any debt that is non-dischargeable as a
9 matter of law in a Chapter 13 case under 11 U.S.C. § 1328.

10
11
12 Debtors assert that the Model Plan language could require a debtor to waive his or her
13 right to the standard chapter 13 discharge of § 1328(a). Their concern is that this language
14 could be interpreted to mean that a debtor who is entitled to a full discharge under § 1328(a)
15 has voluntarily agreed to accept the more limited hardship discharge provided in § 1328(b).³⁸

16
17 Debtors' feared interpretation does not consider the language referencing debt that is
18 non-dischargeable as a matter of law, as opposed to a matter requiring adjudication of facts.
19 This provision forecloses the discharge of debts that may be discharged only through an
20 adversary proceeding, such as the student loan at issue in *Espinosa*, 559 U.S. 260, 130 S. Ct.
21 1367. It does not limit the type of discharge to which a debtor may be entitled as a matter of
22 law.

23
24 Since 2009, chapter 13 plans from the San Francisco Division applied substantially
25 similar language. During this lengthy period, the court is not aware of any request to interpret
26 this provision in the manner Debtors anticipate. In any case, the discharge granted by
27 separate order at the conclusion of a case provides the ultimate determination of the scope of
28 discharge.

27
28 ³⁸ *Vick*, 16-50401, Docket # 27, page 18, lines 19-21.

1 Nevertheless, the proposed revision from § 1328 to § 1328(a) is consistent with the
2 intent of this provision and is unlikely to cause confusion. So this additional provision is
3 allowed. Future plans incorporating this additional provision will not require a contested
4 confirmation or evidentiary hearing based on its inclusion.

5

6. Section 5.05 – Delayed Vesting

7

8 The *Escarcega, Candalla, and Sisk* Debtors seek to modify the Model Plan's provision
9 regarding vesting not at the time of confirmation. The Model Plan provides:

10

11 **4.01 Vesting of property.** Property of the estate will revest in Debtor upon confirmation.

12 If Debtor does not want the property to revest, Debtor must check the following box:

13 **SHALL NOT REVEST.**

14 If the property of the estate does not revest in Debtor, Trustee is not required to file income
15 tax returns for the estate, insure any estate property or make any of the Debtor's ongoing,
16 regular post-petition debt payments with the exception of monthly cure payments otherwise
17 required by this plan. Upon completion of this plan, all property shall revest in Debtor.

18

19 Debtor's proposed change to this section is found in Additional Provisions § 5.05, and
20 provides:

21

22 Section 4 of the plan is modified as follows, if checked here:

23 Delayed Vesting: Notwithstanding Section 4.01, property of the estate shall
24 revest in the Debtor upon discharge, dismissal, or the closing of this case, whichever is
25 earlier.

26 Debtors assert that since § 1322(b)(9) provides for vesting "on confirmation of the
27 plan or at a later time" the Model Plan substantially abridges Debtors' rights. Yet their
28 additional provision provides little more than the Model Plan. Debtors seek to have property

MEMORANDUM DECISION

1 revest "upon discharge, dismissal, or the closing of this case, whichever is earlier." In
2 comparison, the Model Plan provides for delayed vesting upon completion of the plan.

3 We look to the plan process to parse out this provision. Once a debtor successfully
4 completes his or her plan payments, he or she will receive a discharge and the case will be
5 closed. If the debtor is not entitled to a discharge, then upon plan completion the case will
6 simply close without it. By providing for revesting upon completion of the plan, the Model
7 Plan provides for revesting as soon as the debtor has completed their obligations. Case
8 completion always precedes discharge or case closing where the debtor has fulfilled his or her
9 obligations under the confirmed plan.

10 The remaining alternative, revesting upon dismissal, is not specifically contemplated
11 in the Model Plan. Section 549(b)(3) specifies that upon dismissal, all property coming into
12 the estate is revested in the title holder. Further, revesting in a debtor upon dismissal is
13 consistent with the Supreme Court's recent interpretation of a debtor's rights upon conversion
14 in *Harris v. Viegelahn*, ____ U.S. ___, 135 S. Ct. 1829 (2015) (holding that undistributed plan
15 payments made by a debtor must be distributed to the debtor and not the trustee upon
16 conversion to chapter 7); and § 1326(a)(2)(providing for disposition of plan payments upon
17 confirmation or failure of plan).

18 Nonetheless, the proposed additional provision specifically addresses the common
19 occurrence of dismissal and is unlikely to cause confusion. Accordingly, the court will
20 approve Additional Provision 5.05. Future plans incorporating this additional provision will
21 not require a contested confirmation or evidentiary hearing based on its inclusion.

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MEMORANDUM DECISION

1 **IV. FINDINGS OF FACT**

2 The findings of fact for each case are as follows:

4 A. In re Dennis M. Escarcega, 16-50368 SLJ

5 Debtor filed a voluntary chapter 13 petition on February 6, 2016. He scheduled
6 unsecured claims of \$65,331. He indicated his monthly income was \$3,171, including a
7 contribution from a significant other of \$800 per month. He scheduled expenses of \$2,821.
8 He indicated on schedule J, that if he received a pay increase, his living expenses would be
9 "increased accordingly." Debtor indicated on Form 122C-1 that his income was below
10 median. He stated that he hoped to obtain a permanent job offer within six months. Debtor
11 indicated he owned real property (his residence) with a value of \$369,006 on schedule A and
12 stated that it was encumbered by a lien with a value of \$271,089. He claimed \$100,000 of his
13 equity in that property as exempt under California law. He disclosed ownership of two
14 vehicles with a total value of \$2,900 on schedule B, which he claimed were exempt under
15 California law. He also owned a recreational vehicle with a value of \$17,000. He scheduled
16 and exempted other household items. Debtor's amended chapter 13 plan proposed to pay
17 \$350 per month to the Trustee to cover his lawyers' fees, the Trustee's fees, and a payment on
18 the recreational vehicle. Debtor proposed to maintain payments on his residence loan
19 separately. He proposed no payment to unsecured creditors.

21 B. In re Eugene E. Vick, 16-50401 MEH

22 Debtor filed a voluntary chapter 13 petition on February 11, 2016. He scheduled
23 unsecured claims of \$21,833. He indicated his monthly income was \$3,049, and his expenses
24 were \$2,404. Debtor indicated on Form 122C-1 this his income was below median. He
25 disclosed ownership of one vehicle with a value of \$24,000, and a lien of \$23,200. He also
26 disclosed ownership of a RV trailer with a value of \$12,000, and a lien of \$3,450. Debtor
27 resides in the RV. He exempted any value in the vehicle, RV, and other personal property.
28 Debtor's amended chapter 13 plan proposed to pay \$645 per month to the Trustee for 59

MEMORANDUM DECISION

1 months to cover his lawyers' fees, the Trustee's fees, and payments of \$80 per month for the
2 vehicle, \$320 per month for the RV, and \$5 per month for electronic goods. He proposed no
3 payment to unsecured creditors.

4

5 C. In re Nanette M. Sisk, 16-50548 SLJ

6 Debtor filed a voluntary chapter 13 petition on February 26, 2016. She scheduled
7 unsecured claims of \$55,082. She indicated her monthly income was \$2,552, and her
8 expenses were \$2,477. These figures were net of her business income and expenses as a sole
9 proprietor. She indicated on schedule J, "As Debtor's self-employment income varies, so
10 with [sic] the living expenses she can afford to pay." Debtor indicated on Form 122C-1 that
11 her income was above median, and her plan would last 5 years. She disclosed ownership of
12 one vehicle with a value of \$5,500, which she claimed as only exempted \$5,100 under
13 California law. Debtor's chapter 13 plan proposed to pay \$75 per month to the Trustee to
14 cover her lawyers' fees and the Trustee's fees. She proposed no payment to unsecured
15 creditors.

16

17 D. In re Jeri Lyle S. Mercado, 16-50651 SLJ

18 Debtor filed a voluntary chapter 13 petition on March 4, 2016. He scheduled
19 unsecured claims of \$18,831. He indicated his monthly income was \$3,068, and his expenses
20 were \$2,893. Debtor indicated on Form 122C-1 that his income was below median. He
21 disclosed ownership of one vehicle with a total value of \$25,000, and a lien of \$24,297, as
22 well as some personal property that was offered as collateral. He exempted any value in his
23 personal property and other household items. Debtor's amended chapter 13 plan proposed to
24 pay \$175 per month to the Trustee for 36 months to cover his lawyers' fees, the Trustee's
25 fees, and payments of \$5 per month to Kay Jewelers and an exercise equipment company. He
26 proposed no payment to unsecured creditors.

27

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MEMORANDUM DECISION

1 E. In re Mark I. Candalla, 16-50659 SLJ

2 Debtor filed a voluntary chapter 13 petition on March 4, 2016. He scheduled
3 unsecured claims of \$60,348. He indicated his monthly income was \$5,741, and his expenses
4 were \$5,186. He indicated on schedule J, "As Debtor's income varies, so will the funds
5 available for living expenses." Debtor indicated on Form 122C-1 that his income was below
6 median. He disclosed ownership of one vehicle with a value of \$22,310, and a secured claim
7 of \$22,310. He claimed any equity in the vehicle and household goods as exempt under
8 California law. Debtor's chapter 13 plan proposed to pay \$555 per month for 60 months to
9 the Trustee to cover his lawyers' fees, the Trustee's fees, a \$225 vehicle payments, and a
10 small amount of priority tax debts. He proposed no payment to unsecured creditors.

11 V. **CONCLUSION**

12
13
14 Orders consistent with this decision are issued in each case contemporaneous with
15 entry of this decision.

16
17 Dated: September 26, 2016

18 M. Elaine Hammond
19 HON. M. ELAINE HAMMOND
20 United States Bankruptcy Judge

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29 HON. STEPHEN L. JOHNSON
30 United States Bankruptcy Judge

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April - July 2016 Cases with Final Decree and Discharge
 (Sorted by difference between confirmed and actual length of plan.)

EXHIBIT A

Last name	Case number	Confirmed Length (mos.)	Actual Length (mos.)	Difference (mos.)	Final Decree
O'Brien	14-53914	60	11	49	5/17/16
Perez	14-53580	60	15	45	5/17/16
Timm	14-53233	60	20	40	7/20/16
Watterson	14-51053	60	21	39	5/18/2016
Banse	13-56515	60	24	36	4/18/16
Ebell	13-56280	60	24	36	4/13/2016
Matias	13-55030	60	27	33	6/14/16
Peralta	13-55149	60	28	32	4/13/2016
Thompson	13-55059	60	29	31	5/23/16
Peralta	13-54128	60	30	30	6/15/2016
Mendoza	13-52380	60	32	28	5/18/2016
Castaneda	14-51457	48	21	27	5/23/16
Koch	12-57538	60	34	26	4/1/2016
Munoz	13-51584	60	35	25	6/15/16
Foster	13-52277	60	35	25	7/20/16
McNair	13-51176	60	35	25	7/21/2016
Torres & Escamilla	12-58087	60	35	25	5/18/2016
Bailey	13-50309	60	36	24	4/13/16
Garcia	12-57725	60	36	24	6/16/2016
Hernandez	12-56909	60	36	24	4/1/2016
Montanez	12-56242	60	37	23	4/1/16
Miletak	12-57520	60	37	23	4/1/16
Tu & Huynh	13-50455	60	37	23	6/16/2016
Khinno	12-57197	60	37	23	4/13/2016
Dinh	12-58703	60	37	23	5/17/16
Dickson	13-52370	55	32	23	4/13/2016
Harris	12-57246	60	38	22	4/18/16
Lee	13-50068	60	38	22	7/20/16
Corona	12-56649	60	38	22	4/1/2016
Bosteder	12-57886	60	38	22	7/20/16
Smith	12-55653	60	38	22	4/13/2016
Ellis	13-50078	60	38	22	7/21/2016
Mendoza	14-50450	48	26	22	6/14/16
Bladow	12-56039	60	39	21	4/1/2016
Pardini	12-58035	60	39	21	7/20/16
Denos	12-54279	60	39	21	4/1/2016
Fritz	12-56454	60	39	21	5/18/2016
Singh & Kaur	12-57208	60	39	21	7/21/2016
Delpasen	12-57490	60	40	20	5/17/16
Aguilar	12-56397	60	40	20	4/13/16
Nguyen	12-53539	60	40	20	4/13/2016
Delgado	12-58091	60	40	20	7/20/16
Legaspi	12-56412	60	40	20	7/20/16
Street	12-55567	60	40	20	5/18/16
Verduzco	11-57820	60	41	19	4/13/16

EXHIBIT A

Last name	Case number	Confirmed Length (mos.)	Actual Length (mos.)	Difference (mos.)	Final Decree
Neumann	12-54068	60	41	19	4/13/16
Roberson	12-54172	60	41	19	5/18/16
Verceles	12-55675	60	42	18	5/19/16
Velez	12-56208	60	42	18	6/15/2016
Walsh	12-56689	56	38	18	5/18/16
Castro & Romo	11-58153	60	42	18	6/22/2016
Fernandez	12-53564	60	42	18	4/1/16
Delgado	12-54957	60	42	18	6/30/2016
Karst	12-52703	60	43	17	5/17/16
Basanty	12-55849	60	43	17	7/21/2016
Preston	12-55025	60	43	17	5/19/2016
Hashemi	12-51543	60	43	17	6/15/16
Anaya	09-61289	58	41	17	5/23/16
Texon	13-52077	50	33	17	5/18/2016
Edem	12-52916	60	43	17	4/1/16
Cooper	12-55539	60	43	17	5/18/2016
Penoringan	11-55616	60	54	16	4/18/16
Roman	11-59254	60	44	16	4/1/2016
Smith	11-56094	60	54	16	4/18/16
Madrigal	12-51659	60	44	16	6/16/2016
Huerta	12-55884	60	44	16	7/21/16
Mena	12-52838	60	44	16	7/21/2016
Paredes	12-51535	60	45	15	7/7/2016
Casica	12-52188	60	45	15	4/13/16
Chateauvert	12-53210	60	45	15	6/1/16
Ramirez	12-52609	60	45	15	6/16/16
Ahmed	12-53885	58	43	15	5/19/2016
Dang & Phan	12-51561	60	45	15	4/13/16
Nguyen	11-60472	60	45	15	4/1/16
Condori	12-51729	60	45	15	4/13/2016
Hernandez	12-51210	60	45	15	6/22/16
Beuttler	12-51886	60	46	14	7/20/16
Cervantes	12-52950	60	46	14	6/15/2016
Velazquez	12-50844	60	46	14	4/1/2016
Powers	12-53449	60	46	14	7/21/2016
Argo	12-53090	60	46	14	7/22/16
Ybarra	11-61287	60	47	13	4/13/16
Blue	12-50454	60	47	13	4/18/2016
Orozco & Romo-Orozco	12-50869	60	47	13	5/18/2016
Sepulveda	11-59341	60	47	13	4/13/16
deVolo	11-61359	60	47	13	4/1/16
Martin	12-51792	60	47	13	6/15/2016
Canchola	12-50470	60	47	13	5/18/2016
Gutierrez	12-50166	60	48	12	6/16/16
Lewis	13-51822	57	45	12	5/18/2016

EXHIBIT A

Last name	Case number	Confirmed Length (mos.)	Actual Length (mos.)	Difference (mos.)	Final Decree
Lam	11-56728	60	48	12	4/13/16
Carandang	13-55963	36	28	12	7/20/16
Samano	12-51252	60	48	12	7/21/2016
Castulo	12-53821	52	40	12	4/1/2016
Filipe	12-50310	60	48	12	4/13/2016
Brady	11-60369	60	49	11	4/13/16
Lucero	11-57530	60	49	11	5/18/2016
Paniagua	11-57254	60	49	11	4/1/2016
Whitcomb	11-61374	60	49	11	7/21/2016
Jaquith	12-51952	60	49	11	7/20/16
Mladineo	13-54594	36	27	11	4/16/16
Bracamontes	14-50664	36	25	11	7/21/2016
Flaherty	11-59579	60	49	11	5/18/2016
Howard Tiggs	11-59144	60	49	11	4/1/2016
Chang	11-59768	60	49	11	4/13/2016
Sauce	11-57365	60	49	11	5/19/2016
Murga	12-56248	53	42	11	6/15/2016
Tapia	11-59277	60	50	10	4/13/16
Rodriquez	11-60680	60	50	10	5/17/16
Bayquen	11-61397	60	50	10	6/30/2016
Leach	12-50032	60	50	10	6/15/2016
Guagliardo	11-56471	60	50	10	4/13/2016
Michel	12-52158	55	45	10	4/13/16
Sikora	11-60216	60	50	10	4/18/16
Parrish & Romero	11-61775	60	50	10	7/20/2016
Cullen	11-61736	60	50	10	6/16/16
Wong & So	11-60925	60	50	10	7/20/2016
Yanit	11-61089	60	51	9	7/22/16
Sakuragi	11-59739	60	51	9	5/18/2016
Granada	11-57739	60	51	9	4/1/16
Medellin	11-55112	60	51	9	4/1/2016
Chavez	12-51083	55	46	9	4/1/2016
Odom	11-58476	60	51	9	4/1/16
Lagdamen	11-59080	60	51	9	5/17/16
Rocha & Acosta	11-55592	60	51	9	6/15/2016
Perales	11-58635	60	52	8	5/19/16
Gutierrez	11-56478	60	52	8	4/1/16
Lee	10-62094	60	52	8	4/20/2016
Blanco	13-53441	37	29	8	4/13/2016
Lozano	11-58461	60	52	8	4/13/2016
Wallis	11-58870	60	52	8	7/20/16
Jenott	11-56259	60	52	8	4/13/2016
Garza	11-57142	60	52	8	5/18/16
Blute	11-56214	60	52	8	4/1/2016
Radilla	11-56522	60	53	7	4/1/2016

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EXHIBIT A

Last name	Case number	Confirmed Length (mos.)	Actual Length (mos.)	Difference (mos.)	Final Decree
Bozzo	12-55305	48	41	7	5/19/16
Valencia	11-56563	60	53	7	4/13/16
Brantveyn	11-53741	60	53	7	4/13/2016
Lopez	11-59045	60	53	7	6/17/2016
Pope	11-56089	54	53	7	4/13/2016
Velez	11-54840	57	50	7	4/1/2016
Edge	11-54767	60	53	7	5/18/2016
Lopez	11-57679	60	53	7	7/22/16
Noriega	11-56611	60	53	7	4/13/2016
Vasquez	11-59529	60	53	7	7/20/2016
Morgensen	11-55931	60	54	6	4/13/16
Aragon	11-54981	60	54	6	4/1/2016
Dunn	11-55036	60	54	6	4/1/2016
Fernandez	11-57692	60	54	6	6/15/2016
Ibarra	11-54578	60	54	6	4/1/2016
Jaklevick	11-57340	60	54	6	6/15/2016
Mendoza	11-55064	60	54	6	4/1/2016
Gochangco	11-57069	60	54	6	7/22/16
Manuleleua	11-57058	58	52	6	7/20/16
Nevarez	11-58292	58	52	6	4/18/16
Main	11-58533	60	54	6	6/15/16
Hood	11-57809	60	54	6	6/16/16
Alamillo	11-55216	60	54	6	4/1/16
Mapalad	11-56453	60	54	6	6/15/2016
Velazquez	12-53034	48	42	6	6/15/2016
Alvarez	11-54039	60	55	5	4/13/16
Green	11-54954	60	55	5	4/18/2016
Rader & Sanchez	11-54678	60	55	5	5/18/2016
Labra	11-57598	60	55	5	6/14/16
Arriaga	11-57988	60	55	5	7/20/16
Ferraz	11-54062	58	53	5	6/15/16
Deem	13-52180	37	32	5	7/20/16
Raynov	13-51319	37	32	5	4/13/16
Hernandez	11-56925	60	55	5	7/20/2016
Raynova	13-51320	37	32	5	4/13/2016
Garcia	11-55970	60	55	5	5/17/16
Davidson	12-57417	45	40	5	6/16/16
Jensen	11-54080	60	55	5	6/1/16
Gaudette	10-50123	60	55	5	4/28/2016
Pashut	13-54607	36	31	5	7/21/2016
Smith	11-54685	60	55	5	4/18/2016
Clark	11-59550	60	54	4	7/20/2016
Kosmorsky	11-55415	60	56	4	6/17/2016
Niufar	11-51090	60	56	4	4/13/2016
Urbina	11-56995	60	56	4	7/20/2016

EXHIBIT A

Last name	Case number	Confirmed Length (mos.)	Actual Length (mos.)	Difference (mos.)	Final Decree
Sanchez & Salas	11-52935	60	56	4	4/18/2016
Garner	12-54455	49	45	4	6/16/16
Howe	11-52792	60	56	4	4/18/2016
Singca	11-50335	60	56	4	4/18/2016
Graham	11-57139	60	56	4	7/20/2016
Lockett	11-54113	60	56	4	4/13/2016
Rojas & Aranda	11-52776	60	56	4	4/18/2016
Tran	10-62095	60	56	4	4/13/16
Garcia	11-56118	60	56	4	6/30/2016
Nguyen	11-50165	60	56	4	4/13/2016
McDougall	11-55916	60	56	4	6/16/16
Clark	11-59849	54	50	4	4/13/2016
McIntyre	11-59086	58	54	4	7/20/2016
Bajala	11-56016	60	56	4	6/16/16
Mateo	11-51857	60	57	3	4/4/16
Humble	11-53883	60	57	3	6/15/16
Sargenti	10-63220	60	57	3	5/16/16
Caballero	11-50780	60	57	3	4/1/16
Flonnoy	11-56575	60	57	3	7/20/16
Oliver	11-57018	60	57	3	7/20/2016
Soto & Garibay	11-52475	60	57	3	4/18/2016
Lamboy	10-62826	60	57	3	4/13/2016
Gump & Coral	11-50057	58	55	3	4/13/16
Roth	11-57059	58	55	3	7/20/2016
Sanchez	12-58543	37	34	3	5/17/16
Demayo	11-59495	57	54	3	7/20/16
Mack	11-56365	60	57	3	7/20/2016
Carvajal	11-50664	60	57	3	4/28/2016
Toledo	11-54649	60	57	3	6/16/2016
Tran	11-51764	60	57	3	4/18/2016
Shorter	11-57300	54	51	3	4/1/16
Aguilar	13-53266	37	34	3	7/21/2016
Brundgege	13-52348	38	35	3	7/21/2016
Gaska	11-55426	60	57	3	6/16/2016
Lopez	11-50967	60	57	3	4/13/16
Caberto	11-52549	60	57	3	4/13/2016
Sawamura	11-54338	60	57	3	6/14/16
Flores	11-54493	60	57	3	7/20/2016
Adams	11-53923	60	57	3	6/15/16
Sayson	11-52723	60	58	2	5/17/16
Tallerico	11-52918	60	58	2	6/14/16
Sparkman	11-51314	60	58	2	7/21/16
Ramirez	11-52066	60	58	2	7/20/2016
Williams	11-54939	60	58	2	7/20/2016
Ogana	11-50152	60	58	2	4/18/2016

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 (Sorted by difference between confirmed and actual length of plan.)

EXHIBIT A

Last name	Case number	Confirmed Length (mos.)	Actual Length (mos.)	Difference (mos.)	Final Decree
Hawkins	11-59983	55	53	2	7/20/16
Skeen	12-52713	60	48	2	7/20/16
Herrera	11-50316	60	58	2	7/20/16
Ivey	11-54204	60	58	2	7/21/2016
Gentle	11-55082	60	58	2	7/20/16
Do	11-54201	60	58	2	7/20/2016
Kuhllow	13-53047	36	34	2	7/20/16
Harnden	13-51015	36	34	2	4/18/2016
Watterston	13-50021	36	35	1	4/13/16
Carrillo	11-53444	60	59	1	7/21/16
Culbertson	11-52912	60	59	1	6/16/16
Casias	11-50731	60	59	1	5/18/16
Contreras	11-50726	60	59	1	4/18/16
Diaz	11-51494	60	59	1	7/21/16
Shroff	10-62999	60	59	1	7/22/16
Rael	11-54269	60	59	1	7/20/2016
Barragan	12-59010	36	35	1	6/30/16
Hensley	11-51617	60	59	1	5/18/16
Gonzalez	10-63287	58	57	1	4/13/16
Djebroun	11-51274	60	59	1	6/15/2016
Nguyen	12-50356	49	48	1	6/16/16
Albano	12-58904	36	35	1	4/28/2016
Morgia	13-50572	36	35	1	7/21/2016
Castillo	11-53116	57	56	1	5/19/16
Ramirez	10-63286	60	59	1	5/19/16
Kuntaeodjanjun	11-53976	60	59	1	7/20/2016
Arguello	11-55142	60	59	1	7/20/16
Sawant	11-50168	60	59	1	7/20/16
Nguyen	11-50479	60	59	1	6/3/16
Vuong & Lam	11-51302	60	59	1	6/16/2016
Gulas	12-54433	42	41	1	4/1/16
Brown	11-51481	60	59	1	5/18/16
Chandler	11-52437	60	59	1	7/20/2016
Menchaca	11-50980	60	59	1	7/20/2016
Mesa	11-52493	60	59	1	6/15/16

Section 5. Additional Provisions (Continuation page 1)

- 5.01.** Debtor does not elect to participate in this Court's *Mortgage Modification Mediation (MMM) Program* pursuant to General Order 29.
- 5.02.** Section 1 of the plan is modified as follows:
- a. The length of the plan as reflected in the cumulative terms of the monthly payments provided in Section 1.01(a) is the estimated length of the plan.
 - b. The first sentence of Section 1.01(c) is deleted.
- 5.03.** Section 2 of the plan is modified as follows:
- a. Section 2.08 is deleted.
 - b. Section 2.12 is modified to add the following, if checked here:
 Class 7 claimants shall receive an aggregate dividend of \$ _____ 0 _____, which amount can be increased by up to \$1.00 to an amount sufficient for the trustee to administer payments on these claims, which shall be shared pro-rata based on the amounts of their respective allowed nonpriority unsecured claims.
 Class 7 claimants shall receive 100% payment on their allowed nonpriority unsecured claims.
 - c. If checked here, the following provision is added to Section 2 of the plan:
 Interest shall accrue and be paid on all allowed unsecured claims at the federal judgment interest rate of _____ %.
- 5.04.** Section 4.03 is amended to add "(a)" after "§ 1328" at the end of the sentence.
- 5.05.** Section 4 of the plan is modified as follows, if checked here:
 Delayed Vesting: Notwithstanding Section 4.01, property of the estate shall vest in the Debtor upon discharge, dismissal, or the closing of this case, whichever is earlier.
- 5.06.** *After the first 18 months, the plan payments will increase to \$500 monthly thereafter.*

EXHIBIT C

EUGENE EDWARD VICK

Section 5. Additional Provisions (Continuation page 1)

- 5.01. Debtor does not elect to participate in this Court's *Mortgage Modification Mediation (MMM) Program* pursuant to General Order 29.
- 5.02. Section 1 of the plan is modified as follows:
 - a. Notwithstanding Section 101(a), once the debtor has paid all allowed secured and priority claims and administrative expenses as provided for in this plan, the plan shall be deemed completed and no further payments to the Trustee shall be required.
 - b. The first sentence of Section 1.01(c) is deleted.
- 5.03. Section 2.12 of the plan is modified to add the following:
Class 7 claimants shall receive an aggregate dividend of \$ 0.
- 5.04. Section 4.03 of the plan is amended to add "(a)" after "§1328" at the end of the sentence.

UNITED STATES BANKRUPTCY COURT
for the Northern District of California

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COURT SERVICE LIST

2 ECF Parties by Electronic Means Only

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MEMORANDUM DECISION